

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK**

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| B & R SUPERMARKET, INC., d/b/a | : | Case No. 1:17-cv-02738-MKB-JO |
| MILAM'S MARKET, a Florida corporation, | : | |
| et al., Individually and on Behalf of All | : | <u>CLASS ACTION</u> |
| Others Similarly Situated, | : | |
| | : | |
| Plaintiff, | : | JOINT STATUS REPORT |
| | : | |
| v. | : | Conference Date: September 5, 2019 |
| | : | |
| VISA, INC., a Delaware corporation, et al., | : | |
| | : | |
| Defendants. | X | |
| | | |

Plaintiffs B & R Supermarket, Inc. (d/b/a Milam's Market), Grove Liquors LLC, Strouk Group LLC (d/b/a Monsieur Marcel), and Palero Food Corp. and Cagueyes Food Corp. (d/b/a Fine Fare Supermarket) (collectively, "Plaintiffs") and defendants Mastercard International Inc. ("Mastercard"), Discover Financial Services ("Discover"), Visa Inc. and Visa U.S.A. Inc. (together, "Visa"), and American Express Company ("AmEx") (collectively, "Defendants") respectfully submit this joint report in advance of the status conference scheduled for September 5, 2019. The parties agree that there are no issues ripe for discussion with the Court and respectfully request to cancel the September 5 status conference.

I. PENDING MOTIONS

Plaintiffs' Renewed Motion for Class Certification. On January 31, 2019, the Court entered the third amended scheduling order (Dkt. No. 682), pursuant to which Plaintiffs' renewed motion for class certification was reinstated. Defendants' opposition was served March 15, 2019. On April 10, 2019, the parties submitted a joint letter motion requesting amendments to the operative scheduling order to extend the deadline for Plaintiffs' reply in support of their renewed motion for class certification and the briefing on the parties' respective motions to exclude expert

testimony (Dkt. No. 690). On April 11, 2019, the Court granted the parties' motion and entered the fourth amended scheduling order (Dkt. No. 692). On June 7, 2019, Plaintiffs served their reply briefs and filed the entire briefing provisionally under seal (Dkt. Nos. 698-1–698-39). The briefing was subsequently filed under seal and redacted public versions of the briefing were filed on July 9, 2019 (Dkt. Nos. 706, 707).

Pursuant to the fourth amended scheduling order, any oral argument on Plaintiffs' renewed motion for class certification is to be heard concurrently with Defendants' Motion to Exclude (defined below). As discussed below and per the fourth amended scheduling order, Defendants' Motion to Exclude was fully briefed on July 12, 2019.

Defendants' Motion to Exclude Expert Testimony. On March 15, 2019, along with their opposition to Plaintiffs' renewed motion for class certification, Defendants Mastercard, Visa, and Discover served a motion to exclude Plaintiffs' class certification expert ("Defendants' Motion to Exclude"). Pursuant to the operative fourth amended scheduling order, Plaintiffs served their opposition to Defendants' Motion to Exclude on June 7, 2019. On July 12, 2019, Defendants served their reply brief and filed the entire briefing provisionally under seal (Dkt. Nos. 708-1–708-13). Redacted public versions of the briefing were filed on July 30, 2019 (Dkt. No. 711).

Per the fourth amended scheduling order, any oral argument on Defendants' Motion to Exclude will be heard concurrent with the hearing on Plaintiffs' renewed motion for class certification (Dkt. No. 692).

Discover's Motion to Compel Arbitration. In light of the Court's denial of Plaintiffs' motion for class certification on March 11, 2018 (Dkt. No. 644), and consistent with Discover's position as set forth in previous Joint Status Reports, it is Discover's position that it is proper to

wait until the Court has decided Plaintiffs' renewed motion for class certification before moving to compel arbitration against the approximately 1,200 putative class members with which Discover has valid, enforceable arbitration agreements.

II. STATUS OF DISCOVERY

No additional fact discovery is outstanding at this time.

Respectfully submitted this 27th day of August, 2019, by:

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CERTIFICATE OF SERVICE

I hereby certify that on August 27, 2019, I authorized the electronic filing of the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to all registered parties and attorneys of record.

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